

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

VIRTUAL STUDIOS, INC.,

Plaintiff,

v.

HOME DEPOT U.S.A., INC.,

Defendant.

Civil Action No.
1:14-cv-00190-CLC-SKL

DEFENDANT'S MOTION TO DISMISS

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Home Depot U.S.A., Inc. hereby moves the Court to dismiss this action for failure to state a claim upon which relief can be granted, on the following grounds. First, as to any claims in this action that are based on images that were admitted into evidence during the 2013 trial in this Court of *Virtual Studios, Inc. v. Beaulieu Group, LLC*, No. 1:11-cv-00359-CLC-SKL, such claims are barred either by issue preclusion or by the one-satisfaction rule. Second, the amended complaint fails to identify either the images Virtual claims were infringed or the infringing works, which does not meet federal pleading standards, particularly to the extent that the amended complaint relies on the purported infringement of images that

were not adjudicated during the prior action. The grounds for this motion are explained in further detail in the supporting brief filed herewith.

WHEREFORE, Defendant prays that this motion be heard and granted.

This 16th day of September, 2014.

s/ Thomas M. Byrne

Thomas M. Byrne (*pro hac vice*)

Peter N. Farley (*pro hac vice*)

Stacey M. Mohr (*pro hac vice*)

SUTHERLAND ASBILL & BRENNAN LLP

999 Peachtree Street, NE, Suite 2300

Atlanta, Georgia 30309-3996

404.853.8000

tom.byrne@sutherland.com

peter.farley@sutherland.com

stacey.mohr@sutherland.com

*Attorneys for Defendant Home Depot
U.S.A., Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2014, I electronically filed the foregoing **Defendant's Motion to Dismiss** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to all parties indicated on the Court's electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

s/ Thomas M. Byrne

Thomas M. Byrne